

Office of Chief Counsel  
Internal Revenue Service  
**memorandum**

CC:LM:FS:BOS:POSTF-155984-01  
PCollaran

date: **DEC 18 2001**

to: Alan Freed, Team Manager Group 1126  
LMSB Financial Services, Stoneham, Massachusetts

from: Associate Area Counsel, LMSB, Financial Services, Boston

subject: [REDACTED]  
Taxable years ended: [REDACTED], [REDACTED] and  
[REDACTED]  
Consent to Extend the Period of Limitations  
UIL 6501.08-17 Form and Contents of Wavier  
Earliest Expiration of Statute of Limitations: [REDACTED]

This memorandum responds to your memorandum dated October 4, 2001 requesting guidance on extending the statute of limitations for assessment with respect to [REDACTED] for its taxable years ended [REDACTED], [REDACTED] and [REDACTED]. This memorandum should not be cited as precedent.

[REDACTED] (E.I.N. [REDACTED]), a Delaware Corporation was the parent corporation of an affiliated group of corporations which filed consolidated income tax returns for the taxable years ended [REDACTED], [REDACTED] and [REDACTED].

Your group is presently examining [REDACTED] [REDACTED]' federal income tax returns for its taxable years ended [REDACTED], [REDACTED] and [REDACTED].

After filing its consolidated income tax returns for the years at issue, [REDACTED] changed its name to [REDACTED] retaining the same employer identification number, [REDACTED].

On [REDACTED] you secured From 872, Consent to Extend the Time to Assess Tax, for [REDACTED]'s taxable year ended [REDACTED], extending the period to assess tax to [REDACTED]. On the Form 872 the taxpayer is identified as [REDACTED] (formerly [REDACTED]).

On [REDACTED], you secured a Form 872 for [REDACTED]  
[REDACTED]'s taxable years ended [REDACTED] and [REDACTED]  
[REDACTED], extending the period to assess income tax to [REDACTED]  
[REDACTED]. On the Form 872 the taxpayer is identified as [REDACTED]  
[REDACTED] (formerly [REDACTED]  
[REDACTED]).

Pursuant to a stock purchase agreement dated [REDACTED]  
[REDACTED], among [REDACTED], a  
[REDACTED] corporation, [REDACTED], a Delaware limited  
liability company, [REDACTED], a company incorporated under the  
laws of [REDACTED],  
a company organized under the laws of [REDACTED],  
[REDACTED], a Delaware Corporation, and [REDACTED], a  
Delaware corporation, [REDACTED]  
and [REDACTED] sold to [REDACTED] all of the  
outstanding shares of stock of [REDACTED]. The actual stock  
sale was consummated on [REDACTED].

Effective [REDACTED], [REDACTED] was renamed  
[REDACTED], retaining the same employer identification  
number, [REDACTED].

[REDACTED] remains in existence as a subsidiary  
of [REDACTED].

Generally, the common parent, with certain exceptions not  
applicable here, is the sole agent for each member of the group,  
duly authorized to act in its own name in all matters relating to  
the tax liability for the consolidated return year. Treas. Reg.  
§ 1.1502-77(a). The common parent in its name will give waivers,  
and any waiver so given, shall be considered as having also been  
given or executed by each such subsidiary. Treas. Reg. § 1.1502-  
77(a). Thus, generally, the common parent is the proper party to  
sign consents, including the Form 872 waiver to extend the period  
of limitations, for all members in the group. Treas. Reg. §  
1.1502-77(a). Section 1.1502-77(c) provides that, unless the  
district director agrees to the contrary, an agreement entered  
into by the common parent extending the time within which an  
assessment may be made in respect of the tax for a consolidated  
return year, shall be applicable to each corporation which was a  
member of the group during any part of such taxable year. The  
common parent and each subsidiary which was a member of the  
consolidated group during any part of the consolidated return  
year is severally liable for the tax for such year. Treas. Reg.  
§ 1.1502-6(a).

Treas. Reg. § 1.1502-77T provides for alternative agents and applies if the corporation that is the common parent of the group ceases to be the common parent, whether or not the group remains in existence. Temp. Reg. § 1.1502-77T provides that a waiver of the statute of limitations, with respect to the consolidated group, given by any one or more corporations referred to in paragraph (a)(4) of the section is deemed to be given by the agent of the group. Subparagraph (a)(4)(i) lists as an alternative agent the common parent of the group for all or any part of the year to which the notice or waiver applies. Since [REDACTED] was the common parent of the group for the taxable years ended [REDACTED], [REDACTED] and [REDACTED] [REDACTED] and is still in existence, subparagraph (a)(4)(i) applies. Therefore, [REDACTED] is the proper party to execute the consents to extend the period of limitations for all members of the group.

I.R.C. § 6501(a) provides that as a general rule, tax must be assessed within three years of the filing date of the return. In accordance with I.R.C. § 6501(c)(4), a taxpayer and the Internal Revenue Service may consent in writing to extensions of time for making assessments. The regulations under this Code section do not specify who may sign such consents; however, the Service generally applies the rules applicable to execution of the original returns to consents to the extension of time to make an assessment. I.R.C. § 6062 provides generally that a corporation's income tax return must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. The fact that an individual's name is signed on the return is prima facie evidence that the individual is authorized to sign the return. Rev. Rul. 83-41, 1983-1 C.B. 399 clarified and amplified, Rev. Rul. 84-165, 1984-2 CB. 305.

Accordingly, a current officer of [REDACTED] in his or her capacity as an officer of the corporation is the proper party to execute a Form 872, Consent to Extend the Time to Assess Tax, for [REDACTED] for the taxable years ended [REDACTED], [REDACTED] and [REDACTED]. Rev. Rul. 83-41, 1983-1 C.B. 399 clarified and amplified, Rev. Rul. 84-165, 1984-2 CB. 305.

We recommend that the caption of the Form 872 identifying the taxpayer read as follows: "[REDACTED] (EIN [REDACTED]), formerly [REDACTED], formerly [REDACTED], common parent of the [REDACTED] (EIN [REDACTED]) consolidated group\*". At the bottom of the form you should add the following: "\* This is with respect to the [REDACTED]"

consolidated group for the taxable years [REDACTED], [REDACTED], and [REDACTED]."

On the back of the second page of the Form 872 after the line for the current officer's signature, type in her name, her title, and the name of the corporation for which she is signing the Form 872. Also, make sure that she is an officer of the corporation.

I.R.C. § 6501(c)(4)(B) provides that the Service shall notify the taxpayer of their right: 1) to refuse to extend the period of limitations; or 2) to limit such extension to particular issues; or 3) to limit the extension to a particular period of time. This notice must be provided each time an extension is requested. The legislative history of this provision states that Congress believed that taxpayers should be fully informed of their rights with respect to the statute of limitations on assessment. Congress expressed concern that in some cases taxpayers were not fully aware of their rights to refuse to extend the statute of limitations, and have felt that they had no choice but to agree to extend the statute of limitations upon the request of the Service. See H.R. Conf. Rep. No. 105-599 at 286 (1998).

As part of RRA 98 training, Service personnel were instructed that section 6501(c)(4)(B) can be satisfied by informing taxpayers, either orally or in writing, of their right to refuse to consent to an extension of the statute of limitations, or to limit such an extension to specific issues or to a specific time frame. Service personnel were advised to secure consents to extend statutes of limitations by sending Letter 907(DO) (Rev. 2-2000) or Letter 907(SC) (Rev. 12-1999). See IRM 4541.1 and IRM 121.2.22.3. Service personnel were advised they could provide the taxpayer with a copy of Publication 1035, Extending the Tax Assessment Period (Rev. 12-1999), each time a statute extension was requested, but the best practice would be to advise taxpayers of their rights by sending Letter 907(DO) (Rev. 2-2000), Letter 907(SC) (Rev. 12-1999), or Letter 967 (Rev. 12-1999). (See IRS RRA 98 National Resource Center Question 203.) Service personnel were instructed to document their actions.

On the facts provided, there does not appear to be potential transferee liability. [REDACTED] survives and retains the same employer identification number. Accordingly, it does not appear necessary to secure either Form 2045, Transferee Agreement or Form 977, Consent to Extend the Time to Assess Liability at Law or in Equity for Income, Gift and Estate Tax Liability Against a Transferee or Fiduciary.

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By: \_\_\_\_\_

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